

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AT&T COMMUNICATIONS OF THE SOUTH)	
CENTRAL STATES, INC.)	
COMPLAINANT)	
VS.)	CASE NO. 9703
)	
THE INDEPENDENT TELEPHONE)	
COMPANY, INC.)	
DEFENDANT)	

O R D E R

On October 1, 1986, AT&T Communications of the South Central States, Inc., ("AT&T") filed a formal complaint against Independent Telephone Company, Inc. ("ITC"). AT&T is a regulated telephone utility, authorized to provide interLATA, intrastate communications. ITC is also a regulated telephone utility, authorized to resell WATS¹ on a statewide basis. The substance of AT&T's complaint was its belief that ITC was unlawfully engaged in the resale of intrastate foreign exchange circuits provided by AT&T to ITC.² AT&T based this belief on ITC's status as a reseller of telecommunications services and the two-way

¹ Wide Area Telecommunications Service.

² Foreign exchange service is a type of telephone service in which a customer receives service from a central office of an exchange other than the one serving the area in which the customer is located. Since this service is usually flat-rated, it is an advantage to a customer who would ordinarily place, or receive, a large amount of toll calls to, or from, the foreign exchange. Foreign exchange service can usually be obtained on a one-way or two-way basis.

nature of the foreign exchange circuits, which provides the capability of establishing a telephone call from either end of the circuit. AT&T claimed that the resale of foreign exchange circuits was unlawful because this resale was in violation of the Commission's Order in Admin. Case No. 261,³ dated September 2, 1983, the Commission's Order in Admin. Case No. 293,⁴ dated April 16, 1986, the Commission's Orders in Admin. Case No. 273,⁵ dated May 25, 1984, and May 2, 1985, and the AT&T Channel Services Tariff.

On October 6, 1986, the Commission ordered ITC to satisfy the matters complained of or to file a written answer to the complaint. ITC filed its answer and counterclaim on October 21, 1986. In its answer, ITC admitted that it was engaged in the resale of intrastate foreign exchange circuits provided by AT&T but denied that this practice was unlawful. It argued that the Order in Admin. Case No. 261 had been superseded in relevant part and that the Order in Admin. Case No. 293 applies only to shared tenant services and customer owned, coin operated telephone providers and is immaterial to the complaint. ITC requested that the Commission find that ITC was entitled to resell private lines

³ An Inquiry into the Resale of Intrastate Wide Area Telecommunications Service.

⁴ An Inquiry into Local Resale of Exchange Services by STS and COCOT Providers.

⁵ An Inquiry into Inter- and IntraLATA Competition in Toll and Related Services Markets in Kentucky.

pursuant to AT&T's General Services Tariff. ITC counterclaimed that AT&T had improperly terminated service to 5 foreign exchange circuits, cancelled pending orders on 12 circuits, and provided poor quality circuits. ITC requested the Commission to order AT&T to provide all foreign exchange circuits ordered by ITC and to pay ITC compensatory and punitive damages.

AT&T filed a response to ITC's counterclaim on November 17, 1986, denying all allegations and defending its actions. AT&T requested the Commission to investigate the legality of the use of all channel services provided to ITC by AT&T and to order ITC to immediately suspend any and all of its operations which are in violation of Commission rules and regulations and applicable AT&T tariffs. On November 17, 1986, AT&T moved for judgment on the pleadings and dismissal of ITC's counterclaim.

On March 13, 1987, the Commission issued an Order dismissing that portion of ITC's counterclaim seeking damages from AT&T on the ground that Chapter 278 of the Kentucky Revised Statutes does not give the Commission the authority to award damages.

On March 18, 1987, ITC filed an amended counterclaim, restating its original counterclaim and adding a second count. The basis of the second count was that the Federal Communications Commission ("FCC") had ordered rate reductions to AT&T's interstate tariff, making it economically difficult for an interstate WATS reseller to operate competitively in Kentucky. ITC requested the Commission to revise AT&T's intrastate rates to conform to a rate schedule provided by ITC, or as an alternative,

for the Commission to revise the rates to allow ITC to operate at a profit.

A hearing was held on May 12, 1987, the purpose of which was to consider testimony and other evidence on the complaint and counterclaim. Simultaneous briefs and rebuttals were filed on July 6, 1987, and August 5, 1987.

On August 19, 1987, a letter was filed by Jeffrey L. Wade, attorney for ITC, indicating that ITC had ceased its business operations. However, the public interest will best be served by a ruling on this controversy.

With the exception of ITC's requested rate relief, resolution of the complaint and counterclaims depends on whether or not the resale of foreign exchange service is permitted in Kentucky. The resale of private line service has not been approved by the Commission. In Admin. Case No. 261, wherein the Commission found that the resale of intrastate WATS was in the public interest and should be approved, it was held that insufficient evidence was offered to justify the resale and sharing of private line services.⁶ Although ITC contended that this finding had been superseded, it failed to state any basis for this contention.

In Admin. Case No. 273, the Commission authorized interLATA competition by facilities-based carriers.⁷ The authorization

⁶ Order dated September 2, 1983.

⁷ Order dated May 25, 1984.

included private line services, but the ruling affected only the provision of these services by interLATA, facilities-based carriers and did not authorize resale of these services by WATS resellers.

Although ITC is correct in pointing out that Admin. Case No. 293 applies specifically to shared tenant services and customer owned, coin operated telephone operations, this case is relevant to the extent that it serves to illustrate the Commission's consistency with respect to its prohibition of the resale of private line services.

ITC contends that since the Commission has not expressly and specifically forbidden the resale of foreign exchange service, it must therefore be allowed. However, the absence of a specific prohibition should not be construed as tacit approval of the resale of that service. Resale of utility services, in general, is prohibited unless the Commission expressly permits such resale. Utility tariffs usually reflect this prohibition, as do the applicable AT&T tariffs. The resale of intrastate foreign exchange service has not been approved by this Commission and is in violation of AT&T's Channel Services Tariff, Section C2.2.3, and AT&T's General Services Tariff, Section A2.2.1B.

ITC has requested that the Commission revise AT&T's intrastate rates to allow ITC to operate at a profit. According to ITC, this request is a result of FCC ordered rate reductions in which rates for direct distance dialing were reduced by

approximately 12 percent while interstate WATS rates were reduced only 4 percent. The net effect of these rate reductions was to reduce the difference between the two types of services, making it economically difficult for resold WATS to compete with AT&T's direct distance dialing services. ITC's requested relief is intended to counteract the problems created by the FCC rate change. Rate relief is outside the scope of this proceeding, and ITC's request to revise AT&T's rates should be denied.

Findings and Orders

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. The resale of intrastate foreign exchange service has not been approved and is in violation of AT&T's Channel Services Tariff, C2.2.3, and AT&T's General Services Tariff, A2.2.1B.

2. ITC's counterclaims with respect to quality of service, disconnection of service, and cancellation of service orders should be dismissed.

3. ITC's request that the Commission order AT&T to provide all foreign exchange circuits ordered by ITC should be denied.

4. Rate relief is outside the scope of this proceeding and therefore ITC's request to revise AT&T's rates should be denied.

5. AT&T's request that the Commission order ITC to suspend any and all of its operations involving the resale of foreign exchange service should be approved.

IT IS THEREFORE ORDERED that:

1. ITC's counterclaims with respect to quality of service, disconnection of service, and cancellation of service orders be, and hereby are, dismissed.

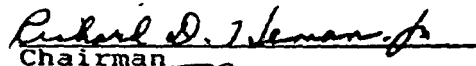
2. ITC's request that the Commission order AT&T to provide all foreign exchange circuits ordered by ITC be, and hereby is, denied.

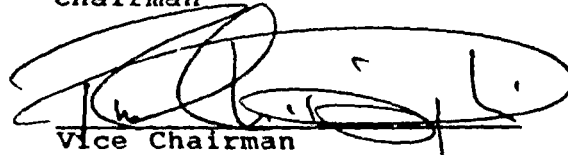
3. ITC's request to revise AT&T's rates be, and hereby is, denied.

4. ITC, should it resume normal business operations, shall refrain from the resale of foreign exchange services.

Done at Frankfort, Kentucky, this 17th day of September, 1987.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director